Farmland Soy Processing Company *and* Hector Mendez. Case 26-CA-8112

August 9, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 30, 1980, Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an "answer brief" in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The General Counsel takes the position that Hector Mendez, the Charging Party herein, had been discharged in violation of Section 8(a)(1) of the Act for persistently complaining about conditions, particularly safety conditions, in Respondent's plant. The Administrative Law Judge recommended that the complaint be dismissed, finding no evidence that Respondent discharged Mendez for engaging in protected concerted activity. We disagree.

Respondent, as part of its business, operates a soy processing plant in Van Buren, Arkansas, employing about 40 people. The operation is around-the-clock, 7 days a week. The plant extracts oil from soybeans, producing two end products— soybean meal and soybean oil. One step of this process, called preparation, produces a large amount of dust, presenting a constant danger of explosion. The next step, extraction, involves hexane, an explosive and flammable substance.[1]

Hector Mendez, the Charging Party, was hired by Respondent on September 9, 1978,[2] as a "dryer operator," a position in the preparation process which he held until his discharge on May 16, 1979. As the Administrative Law Judge found, Mendez made frequent complaints to management and supervisory officials concerning conditions in Respondent's plant, many of them regarding safety. Some of these complaints were oral; others were entered on daily report forms, called preparation logs, completed by Mendez as part of his duties.

Respondent's employees are represented for purposes of collective bargaining by an employee committee. At an employee meeting held in January 1979, to elect members to this committee, Mendez raised a question as to whether Respondent could lawfully require employees to work overtime. Immediately following this meeting, Mendez was summoned to Superintendent Young's office, where he was told that if he refused to work overtime he would be discharged.

On May 16, 1979, Respondent's safety director, Fred Stephenson, began asking employees to sign an "orientation" form that had been received from company headquarters on March 30. The first sentence of this form said that it should be discussed with new employees before they begin work. The form, as it appears in the Administrative Law Judge's Decision, consisted of 13 questions, mostly concerning safety conditions and procedures in Respondent's plant. When shown the form, Mendez asked for some time to consider the questions before signing the form.[3] Mendez testified, undisputed, that he wondered why he was being asked to sign a form designated for "new employees," and that he was concerned about the implications of several of the questions, including those about the "tour," the "first aid station," and the "particular hazards connected with your duties."[4] According to credited testimony, Stephenson offered to explain each item on the form to Mendez, but Mendez continued to ask for more time. Stephenson insisted that Mendez sign the form at that time or be fired. With the concurrence of Young and General Manager Heatherington, Mendez was discharged.

Contrary to the Administrative Law Judge, we find that Mendez was discharged in retaliation for his history of protected concerted activity. We find that the May 16 incident of the safety orientation

[1] Webster's Dictionary defines this as a "volatile liquid hydrocarbon . . . of the paraffin series."

[2] In effect at that time was a booklet on safety issued to all employees, and a posted set of safety rules.

[3] The Administrative Law Judge credited the testimony of Plant Superintendent Young and Safety Director Stephenson "regarding the May 16, 1979, discharge of Mendez." Young testified that Mendez "flat refused" to sign the form. Stephenson, however, testified that Mendez asked if he could read the form and return it in "two or three days." Stephenson testified that Mendez raised substantial questions about the contents of the "questionnaire." The discrepancy between Stephenson's and Mendez' testimony is not critical to our conclusion on this point; Young was not present during this exchange.

[4] Stephenson corroborated this to an extent. The Arkansas Employment Security Board of Review found, after a hearing on the subject of Mendez' discharge, that Mendez "testified, item by item, from the 13 separately numbered items contained in the Orientation Form . . . in a coherent, forthright statement of his subjective doubts, lack of understanding, and conscientious concern for honest answers to certain items and his then reason to believe that an inadvertent false statement in any hurriedly signed form might expose him to unknown but very serious consequences." The Arkansas Board found that Mendez was "discharged for reasons other than misconduct in connection with the work."

form was a pretext for the discharge, and that Mendez had not, contrary to Respondent's assertion, been insubordinate as an employee. Thus, we conclude that Superintendent Young was referring to Mendez' protected activity when he admittedly told him in the discharge interview, "you've been a poor employee and picking at us since you were hired." Furthermore, Young told another employee, about a month after Mendez' discharge, that Respondent had been looking for a way to discharge Mendez.[5]

In our view the record does not support a finding that Respondent discharged Mendez because he would not sign the orientation form on May 16. We note that Respondent waited some 6 weeks before asking any employee to sign the form, and that some employees, already employed as of May 16, signed as late as May 29. Plant Superintendent Young testified that, at the time of Mendez' discharge interview, Mendez was the only employee of 40 who had not yet signed, but Safety Director Stephenson contradicted this, saying he had approached only 4 or 5 other employees at that time; the Administrative Law Judge did not address this conflict. It thus appears, as General Manager Heatherington testified, that the signing of these forms was not a "serious" matter for employees—that is, Mendez' failure to sign immediately was in no sense a dereliction of duty or insubordination.[6]

We note also that the record contains little evidence critical of Mendez' work.[7] Respondent enforced its safety rules—presumably among its most important rules—through a system of progressive discipline. Employees violating any safety rule received a written warning placed in their personnel file; three warnings in 1 month would result in 1 day's suspension. Respondent has never discharged an employee for violating safety rules. Young testified before the Arkansas Employment Security Board of Review that Mendez had no written reprimands in his personnel file. We conclude that Mendez had been "picking at" Respondent only by raising questions concerning employee working conditions, and that is why Respondent began "looking for a way" to discharge him.

Respondent's January reaction to Mendez' question about overtime, including its threat to discharge him, indicates that Respondent viewed any employee questioning of its practices as insubordinate. There is no indication that Mendez had refused to work overtime or said that he would refuse. While Respondent did not directly warn Mendez not to question its practices, it reacted to his questioning with an angry threat of discharge contingent on actions which Mendez had not indicated he would take. We find, not that Respondent's statement violated the Act, but that it manifested an attitude of intolerance and distaste for employee activity that is highly relevant in determining the motivation for Mendez' subsequent discharge, and especially in interpreting Young's statement at the discharge interview—"you've been . . . picking at us . . . ." We would also note that Mendez did not direct his question concerning overtime to management, but to his bargaining representative, an employee committee, at a regular meeting. Clearly, Mendez' asking a question about working conditions, at an employee meeting, was activity protected by Section 7 of the Act, even if the question were asked in an impassioned or belligerent manner.

It also appears that Mendez was the most outspoken employee in raising safety issues; from September 1978 to May 16, 1979, company records show that Mendez reported more safety hazards than any other operator, and that in the last 16 days of that period his daily logs reported 68 different kinds of safety hazards to be corrected. Safety was a matter of widespread concern among Respondent's employees. Respondent solicited employee reports of unsafe conditions, and various employees had complained to management, both orally and in writing, about conditions in the plant. We conclude that employees generally relied on this system of reporting to ensure safe working conditions. Most of Mendez' complaints concerned conditions affecting employees besides himself; this is especially true of conditions at the plant posing the danger of fire and explosion. Thus Mendez' reports were an expression of the common employee concern over working conditions, even though it does not appear that the employees ever complained as a group. See *Hugh H. Wilson Corporation*, 171 NLRB 1040, 1046 (1968).

In sum, Mendez had persistently engaged in concerted activity protected by Section 7 of the Act. Given his generally satisfactory work record, and the circumstances of the May 16 incident of the safety orientation form, we conclude that it was this record of protected activity that Respondent regarded as "picking at" it, and that motivated Respondent to discharge Mendez. Therefore, in dis-

[5] Our dissenting colleague views this latter statement as "insufficient to prove" unlawful motivation, as did the Administrative Law Judge; neither suggests why, if Respondent had a legitimate reason to discharge Mendez, its superintendent would have to "look for a way" to do so.

[6] While Heatherington characterized this testimony differently on redirect examination by Respondent's counsel, we think the meaning of the General Counsel's question on cross-examination and Heatherington's spontaneous response to it are clear.

[7] On one occasion Mendez initially refused, then agreed, to clean hulls from a "pit"; General Manager Heatherington characterized this incident as a "misunderstanding" between Mendez and the leadman.

charging Mendez, Respondent has violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Farmland Soy Processing Company is an employer engaged in commerce and activities affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by discharging Hector Mendez for engaging in protected concerted activities for mutual aid or protection.

3. The aforesaid unfair labor practice affects commerce within the meaning of Section 8(a)(1) of the Act.

THE REMEDY

Having found that Hector Mendez was discharged in violation of Section 8(a)(1) of the Act, we shall order Respondent to cease and desist from engaging in the unfair labor practice found above and from engaging in like or related conduct. Respondent will also be ordered to reinstate Hector Mendez to his former position or one substantially equivalent to it, without prejudice to his seniority or other rights or privileges previously enjoyed, and to make him whole for any loss of earnings he may have suffered by reason of his discharge in violation of the Act. Backpay and interest thereon shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The General Counsel's motion to award interest at 9 percent per annum is hereby denied. See *Olympic Medical Corp.*, 250 NLRB 146 (1980).[8]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Farmland Soy Processing Company, Van Buren, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employee Hector Mendez for engaging in concerted activity for the mutual aid or protection of employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer Hector Mendez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed.

(b) Make Hector Mendez whole for any loss of earnings he may have suffered due to the discrimination practiced against him by paying him a sum equal to what he would have earned, less any net interim earnings, plus interest.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at the Van Buren plant copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by an authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

MEMBER ZIMMERMAN, dissenting:

I fully subscribe to our established principle that an employee who voices concerns over the safety of the workplace may be presumed to be engaged in concerted activity. See *Allelulia Cushion Co. Inc.*, 221 NLRB 999 (1975). However, in reversing the Administrative Law Judge, my colleagues carry that simple proposition well beyond its logical extreme. I cannot join in that exercise.

Respondent's stated reason for discharging Hector Mendez was that he refused to sign a safety orientation form circulated to all of Respondent's employees. As the Administrative Law Judge

[8] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

stated, the General Counsel bears the burden of demonstrating either that Mendez' refusal to sign the form constituted protected concerted activity or that this stated reason for the discharge masked another, unlawful motivation. The Administrative Law Judge found that the General Counsel had not carried its burden of proof as to either of these propositions. The majority appears to reverse both of those findings.

As to the question of whether the refusal to sign the form constituted protected activity, the majority notes that the form dealt with safety issues, and that, upon reading it, Mendez found that it required "a little study." Mendez totally failed to articulate what aspects of the form required prolonged consideration, and the Administrative Law Judge credited the testimony of Safety Director Stephenson that he offered to explain any portion of the form that troubled Mendez. The only reason that Mendez could advance at the hearing for needing time to review the form was that certain aspects of it did not apply to him in that they referred to "new employees." The Administrative Law Judge properly found that this "asserted reason, although it may appear reasonable, does not qualify as justifying Section 7 protection."

The more serious question is whether Respondent used Mendez' refusal to sign the form as a pretext to discharge him because he had been vociferous in complaining about safety hazards. The mere fact that Mendez had engaged in protected activity by filing a number of safety complaints does not, without more, permit an inference that his discharge was for that activity. If it did, an employee could immunize himself against discharge for cause simply by actively engaging in protected activity. The majority also relies on Superintendent Young's statement 1-1/2 months after Mendez' discharge that Respondent had been "looking for a way" to discharge Mendez. As the Administrative Law Judge properly noted, that statement standing alone is insufficient to prove that Respondent discharged Mendez for making too many safety complaints.[10]

Since I find, in agreement with the Administrative Law Judge, that the General Counsel has failed to produce sufficient evidence to prove that Respondent discharged Mendez for an improper reason, the amount of evidence the record contains to bolster Respondent's claimed dissatisfaction with Mendez' performance is irrelevant. The General Counsel bears the burden of demonstrating that the discharge of an alleged discriminatee occurred for an improper reason. Unless and until he satisfies that burden, Respondent need not come forward with any evidence at all. Here, the General Counsel failed to carry that burden.

[10] The majority also refers to an incident 5 months before Mendez' firing in which he questioned Respondent's authority to impose mandatory overtime, and was subsequently warned that refusal to work overtime constituted an offense warranting discharge. From that single incident, the majority infers that Respondent "viewed any employee questioning of its practices as insubordinate." I fail to see how the incident supports the inference. Superintendent Young simply warned Mendez that if he acted on his belief that mandatory overtime was unlawful he would be discharged. It was the prospective failure to follow Respondent's rules, not the questioning of its practices, that Young warned Mendez about. The majority makes no suggestion that Young's actions or Respondent's policy in any way violate the Act.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge our employees for engaging in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Hector Mendez immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed.

WE WILL make Hector Mendez whole for any loss of earnings he may have suffered as a result of the discrimination against him, with interest.

FARMLAND SOY PROCESSING COMPANY

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard before me on February 14, 1980, in Van Buren, Arkansas. The complaint, which issued on December 6, 1979, and was amended on December 28, 1979, alleges that Respondent violated Section 8(a)(1) of the Act by threatening to get rid of an employee and by discharging employee Hector Mendez.

Upon the entire record[1] and from my observation of the witnesses, and after due consideration of the briefs

[1] On February 26, 1980, counsel for the General Counsel filed a motion to introduce the General Counsel's exhibits. On February 28, *Continued*

filed by the General Counsel and Respondent, I hereby make the following:

FINDINGS

The Evidence

Respondent, Farmland Soy Processing Company, is engaged in soybean processing with a facility located in Van Buren, Arkansas.[2]

The alleged discriminatee, Hector Mendez, was employed by Respondent from September 9, 1978, until his discharge on May 16, 1979. At the time of his discharge, Mendez was employed as a "prep room operator." During the course of his employment, Mendez made frequent complaints about conditions in Respondent's facility. Those complaints included numerous complaints about safety conditions. The evidence indicates that Mendez complained through daily reports which he prepared called "preparation logs," and through oral complaints to various supervisors and management personnel. Mendez' numerous complaints included complaints which he made on February 10 and 23, 1979, and on other occasions. According to Mendez' testimony, he made comments on his preparation logs regarding safety hazards at the rate of two to three times a week.

At the time of Mendez' termination, Respondent employed Freddie Stephenson as safety director. Stephenson testified that his duties included instructing employees regarding safety and insuring that employees followed safety rules. In that regard, Stephenson had authority to discipline employees by issuing a "card" for infractions of the safety rules. Also included within Stephenson's duty was the obligation to see that all employees were familiar with the safety rules.

During the spring of 1979, Stephenson received a new "orientation form" from Lyle Evans who is in charge of safety and security for Respondent. The "orientation form" which Stephenson received from Evans read as follows:[3]

ORIENTATION SHEET

The following items should be discussed with the new employee, using this sheet as a checklist, prior to being placed on the job:

1. Has physical examination been approved? []

2. Has the employee been shown where he can get the necessary safety equipment such as goggles, mask, hard hats, etc.? []

3. Does he know where the firefighting equipment is located? []

4. Does he know how to use it? []

5. Is he familiar with the particular hazards connected with his duties? []

6. Is he familiar with the routine of reporting all injuries promptly to the first aid section? []

7. Does he know how to call the fire department, ambulance, doctor or police in case of an emergency? []

8. Has he been told about the organization's interest in promoting safety? []

9. Has he been thoroughly instructed in his duties? []

10. Has he been instructed to report all unsafe conditions to his supervisor immediately? []

11. Has he been advised that working safely will benefit both himself and the company in various says? []

12. Has new employee received a tour of entire facility prior to starting his normal job? []

13. Has new employee received a copy of company safety rules and read them? []

Employee's Signature Date

Supervisor's Signature

File employee's personnel file folder.

On May 16, 1979, Stephenson began circulating the "orientation forms" among the employees. Stephenson asked each employee to read and sign the form.

Stephenson testified that he approached employee Hector Mendez on May 16 and asked Mendez to read the orientation form and sign it. According to Stephenson's testimony, "I told him I'd be willing to go over the entire form with him, answer any questions, go over it with him in any way whatsoever."

Mendez testified that when Stephenson approached him on May 16, 1979, and asked him to read and sign the orientation form, he asked Stephenson if there was any hurry. According to Mendez, he asked Stephenson if he could bring the form back the next day after he had an opportunity to study it. Mendez stated that he felt it was necessary to study the form because, when he glanced at it, he saw that there were things on the form that needed a "little study." According to Mendez, Stephenson told him that it was possible for him to keep the form and study it for a day or two.

However, Mendez testified that some 15 or 20 minutes later Stephenson came back and asked Mendez to accompany him to the maintenance office. Mendez testified that on the way to the maintenance office, Stephenson told him that if he did not sign the form he would be fired. Mendez testified that he was then taken in to see Sam Young, the plant superintendent. Mendez testified that Young told him that he had been too "picky" ever since he had been there and that, if he did not sign the orientation form, "that Freddie [Stephenson] was acting

1980, counsel for Respondent filed a "Response and Opposition to General Counsel's Motion to Introduce Exhibits." In its response, Respondent objects to the receipt into evidence of G.C. Exhs. 25(a)–(j), but does not object to the receipt of G.C. Exhs. 24(a)–(p). I hereby grant the General Counsel's motion as to Exhs. 24(a)–(p), but deny the motion as to Exhs. 25(a)–(j). The record indicates that I offered to receive documents in addition to the matter represented by Exhs. 24(a)–(p) only on condition of disagreement between the parties regarding their post-hearing stipulation. There has been no showing that that condition arose.

[2] The commerce facts and conclusions are not at issue. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act.

[3] Testimony indicated that there were actually two different "orientation forms" an 11-question form and the 13-question form herein. Mendez testified that he was shown the 13-question form on May 16.

under his direction and I would be fired." Mendez testified that he was then discharged.

Mendez then asked to see Larry Heatherington, general manager of the Van Buren facility. Mendez testified that he told Heatherington that, "I had just been fired because I had refused to sign a safety form." Heatherington asked Mendez to go into the breakroom while he checked into the matter. A few minutes later, Heatherington called Mendez in and informed him that he was sorry but he had to agree with Sam Young.

Mendez admitted that he told Stephenson and Young that he was not going to sign the form. Mendez testified that he told Young, "I told him I need some time—I told Mr. Young I needed some time to look it over."

Employee George Miller testified that when Mendez was discharged he (Miller) was a member of the "employee committee" that had a contract with Respondent. Miller testified that approximately 1 to 1-1/2 months after Mendez' discharge, Plant Superintendent Young told Miller that "they was [sic] looking for a while to get rid of [Mendez]."

CONCLUSIONS

Mendez' Discharge

Although there is no dispute that on May 16, 1979, Mendez refused to sign Respondent's "orientation form," after being directed to do so by first the safety director then the plant superintendent, the General Counsel argues that Respondent's asserted reasons for discharging Mendez were pretextual. The General Counsel argues that "Mendez was a very conscious [sic] regarding safety, he had reasons to believe that an inadvertent false statement on any hurriedly signed form might expose him to unknown or very serious consequences, particularly in light of the fact that the employer gave written warnings for violations for any of its safety rules." Counsel for the General Counsel argues that "the reason for Mendez' discharge was pretextual, and his questioning the orientation form was really the straw that broke the camel's back and that the company used this as a way of getting rid of Mendez, clear and simple." According to the General Counsel, the real reason for Mendez' discharge was the fact that Mendez protested safety hazards more frequently than any of Respondent's other employees.

I have concluded on the basis of the entire record that the General Counsel's case must fail. In reaching my decision, I have credited the testimony of Safety Director Stephenson and Plant Superintendent Young regarding the May 16, 1979, discharge of Mendez. I was impressed with both Stephenson's and Young's demeanor and I find their versions of the conversation with Mendez on that date more logical than Mendez' version.

The facts are not in dispute that Mendez was directed to sign the orientation form on May 16 and that he repeatedly refused.

In order for the General Counsel to prevail, it would be necessary to show either that Mendez, by refusing to sign the orientation form, was engaged in protected concerted activity or that other matters which were protected and concerted form a basis for his discharge.

As the first alternative available to the General Counsel, i.e., that Mendez, by refusing to sign the orientation form was engaged in protected concerted activities, I find no support whatsoever in the evidence. It appears that Respondent's orientation form is a legitimate device for improving safety. The General Counsel does not argue, and I do not find, that there is anything within the document itself which would render Mendez' resistance to signing the document protected concerted activity. As indicated above, I credit the testimony demonstrating that Safety Director Stephenson offered to explain the orientation form to Mendez prior to Mendez signing the document. Nevertheless, Mendez insisted on not signing the document at that time. I find nothing improper under the Act, in Respondent's insistance that Mendez sign the orientation form on April 16. Moreover, there is no evidence to indicate that Mendez, by refusing to sign the document, was protesting safety conditions or otherwise engaging in concerted activities. In that regard I note that Mendez testified that he refused to sign because he noticed that there were some provisions that did not apply to him, such as the provision at the top of the form indicating that it pertained to new people. Mendez' asserted reason, although it may appear reasonable, does not qualify as justifying Section 7 protection. Therefore, the record indicates, and I find, that Mendez was not engaged in protected concerted activities when he refused to sign the orientation form.

In consideration of the second alternative, the General Counsel argues that Mendez was actually discharged because he filed a great number of safety complaints. In this regard the General Counsel points to evidence contained in records demonstrating that Mendez, more than any other employee, complained about conditions in the plant. However, I am unable to find anything in the record demonstrating that Respondent considered Mendez' complaints as a basis for his discharge. The record lacks any showing that Respondent was alarmed by what the General Counsel contends was protected concerted activity; i.e., Mendez' complaints about safety. There was a comment by Plant Superintendent Young approximately 1 to 1-1/2 months after Mendez' discharge to the effect that Respondent had been looking for a way to discharge Mendez. However, that statement standing alone does not demonstrate that Respondent was unhappy over Mendez' protected activity or that other reasons were considered in deciding to discharge him.

I find that the evidence does not show that Mendez was discharged for reasons protected under the Act. Therefore, I find that the evidence does not support a violation in Mendez' discharge.

The Alleged 8(a)(1) Statement

I credit the undenied testimony of employee George Miller that approximately 1 to 1-1/2 months after Mendez' discharge, Plant Superintendent Young told Miller that "they was [sic] looking for a while to get rid of [Mendez]." However, as I indicated in my findings above, there is nothing to connect Superintendent Young's statement with the General Counsel's claim that Mendez was discharged because of his protected con-

certed activities. The mere fact that an employer is looking for a way to get rid of an employee does not constitute a basis for a violation, nor does the threat that the employer is engaged in such activity constitute a violation, absence some showing of illegal motivation for the employer's action. In the instant case there was no such showing nor was there any evidence indicating that employee Miller had a basis to reasonably believe that Respondent was looking for a way to get rid of Mendez because of Mendez' protected concerted activity.

I shall therefore recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Farmland Soy Processing Company is an employer engaged in commerce and activities affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has not engaged in any unfair labor practices as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]